



UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Issued by the Department of Transportation on September 29, 2004

NOTICE OF ACTION TAKEN -- DOCKET OST 2004-19021

This serves as notice to the public of the action described below, taken by the Department official indicated (no additional confirming order will be issued in this matter).

Joint Applicants: **AC Cargo Limited Partnership d/b/a Air Canada Cargo**

Date Filed: August 27, 2004, as supplemented September 17, 27, and 29, 2004¹

Relief requested: Exemption from 49 USC § 41301 to permit the applicant, Air Canada Cargo, by blocked-space arrangements with two of its affiliates, Air Canada and Air Canada Jazz, to engage in the scheduled foreign air transportation of property and mail, between any point or points in Canada and any point or points in the United States; and Statements of Authorization under 14 CFR Part 212 to permit Air Canada and Air Canada Jazz to block space to carry Air Canada Cargo's cargo, on Air Canada and Air Canada Jazz flights between Canada and the United States.

If renewal, date and citation of last action: New authority.

Applicant representative: Anita Mosner, 703-294-5890

DOT analyst: Allen F. Brown, 202-366-2405

Responsive pleadings: None

DISPOSITION

Action: Approved

Action date: September 29, 2004

Effective dates of authority granted: The exemption and statements of authorization are effective September 29, 2004, through September 29, 2005.

Basis for approval: Authority to conduct scheduled, all-cargo services between the United States and Canada and to block space for such operations is encompassed by the United States-Canada Air Transport Agreement.

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations indicated: Standard exemption conditions (attached).²

Special conditions/Remarks: The Canadian carrier, Air Canada Cargo, has undergone a corporate restructuring, under which Air Canada's all-cargo operations will be conducted by the recently formed entity, Air Canada Cargo, which proposes to initiate these U.S. cargo operations by blocking space on two of its affiliates, Air Canada and Air Canada Jazz. We found, based on the record in this case, that Air Canada Cargo is properly licensed by its homeland government, operationally and financially qualified to undertake its proposed operations (as conditioned), and is substantially owned and effectively controlled by citizens of Canada.

¹ Together with its September 27 supplement, Air Canada Cargo filed a motion for confidential treatment of its financial submissions. In our view Air Canada Cargo has demonstrated good cause for favorable action on its motion, and we grant it.

² The authority granted to Air Canada Cargo is also subject to the limitations contained in Annex I, sections 2, 3, and 5 of the United States-Canada Air Transport Agreement.

Air Canada Cargo may only conduct the U.S. operations authorized by blocking space on flights operated by Air Canada and/or Air Canada Jazz. (In this NOAT, we have granted these two Canadian carriers authority under Part 212 to block space on their Canada-U.S. flights for the carriage of Air Canada Cargo's traffic.)

**Action taken by: Paul L. Gretch, Director
Office of International Aviation**

Under authority assigned by the Department in its regulations, 14 CFR Part 385, we found that (1) our action was consistent with Department policy; (2) the applicant was qualified to perform its proposed operations; (3) grant of the authority was consistent with the public interest; and (4) grant of the authority would not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975. To the extent not granted/deferred/dismissed, we denied all requests in the referenced Docket. We may amend, modify, or revoke the authority granted in this Notice at any time without hearing at our discretion.

Persons entitled to petition the Department for review of the action set forth in this Notice under the Department's regulations, 14 CFR §385.30, may file their petitions within seven (7) days after the date of issuance of this Notice. This action was effective when taken, and the filing of a petition for review will not alter such effectiveness.

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http://dms.dot.gov/reports/reports_aviation.asp

Foreign Carrier Exemption Conditions

In the conduct of the operations authorized, the foreign carrier applicant(s) shall:

- (1) Not conduct any operations unless it holds a currently effective authorization from its homeland for such operations, and it has filed a copy of such authorization with the Department;
- (2) Comply with all applicable requirements of the Federal Aviation Administration, including, but not limited to, 14 CFR Parts 129, 91, and 36, and with all applicable U.S. Government requirements concerning security, including, but not limited to, 49 CFR Part 1546 or 1550, as applicable. To assure compliance with all applicable U.S. Government requirements concerning security, the holder shall, before commencing any new service (including charter flights) from a foreign airport that would be the holder's last point of departure for the United States, contact its International Principal Security Inspector (IPSI) to advise the IPSI of its plans and to find out whether the Transportation Security Administration has determined that security is adequate to allow such airport(s) to be served;
- (3) Comply with the requirements for minimum insurance coverage contained in 14 CFR Part 205, and, prior to the commencement of any operations under this authority, file evidence of such coverage, in the form of a completed OST Form 6411, with the Federal Aviation Administration's Program Management Branch (AFS-260), Flight Standards Service (any changes to, or termination of, insurance also shall be filed with that office);
- (4) Not operate aircraft under this authority unless it complies with operational safety requirements at least equivalent to Annex 6 of the Chicago Convention;
- (5) Conform to the airworthiness and airman competency requirements of its Government for international air services;
- (6) Except as specifically exempted or otherwise provided for in a Department Order, comply with the requirements of 14 CFR Part 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (7) Agree that operations under this authority constitute a waiver of sovereign immunity, for the purposes of 28 U.S.C. 1605(a), but only with respect to those actions or proceedings instituted against it in any court or other tribunal in the United States that are: (a) based on its operations in international air transportation that, according to the contract of carriage, include a point in the United States as a point of origin, point of destination, or agreed stopping place, or for which the contract of carriage was purchased in the United States; or (b) based on a claim under any international agreement or treaty cognizable in any court or other tribunal of the United States. In this condition, the term "international air transportation" means "international transportation" as defined by the Warsaw Convention, except that all States shall be considered to be High Contracting Parties for the purpose of this definition;
- (8) Except as specifically authorized by the Department, originate or terminate all flights to/from the United States in its homeland;
- (9) Comply with the requirements of 14 CFR Part 217, concerning the reporting of scheduled, nonscheduled, and charter data;
- (10) If charter operations are authorized, except as otherwise provided in the applicable aviation agreement, comply with the Department's rules governing charters (including 14 CFR Parts 212 and 380); and
- (11) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department, with all applicable orders or regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

This authority shall not be effective during any period when the holder is not in compliance with the conditions imposed above. Moreover, this authority cannot be sold or otherwise transferred without explicit Department approval under Title 49 of the U.S. Code.